



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

December 6, 2004

Mr. James M. Frazier III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2004-10330

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 214351.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to an identified inmate. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1325 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Most of the submitted records contain information about an inmate confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, the majority of the submitted information is excepted from disclosure under section 552.134 of the Government Code and

must be withheld. One of the submitted records, a victim impact statement, does not pertain to the inmate. Accordingly, the victim impact statement may not be withheld under section 552.134.

However, you claim that information contained within the submitted victim impact statement is excepted from disclosure under section 552.1325, which provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. The purpose of section 552.1325 is to protect privacy interests of crime victims. You claim that the name of the person who signed the victim impact statement should be withheld under section 552.1325 as information tending to identify the crime victim. In this instance, however, the victim to whom the information at issue pertains is deceased. Since the right of privacy lapses at death, the department may not withhold the name of the person who signed the victim impact statement under section 552.1325. *See generally Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

You also claim that some of the information within the victim impact statement is excepted from disclosure pursuant to section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common law right of privacy. The United States Supreme Court recently recognized that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). However, in order for information to be

protected under common law privacy, it must both (1) contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) not be of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In this instance, you have not demonstrated that the information you seek to withhold is intimate or embarrassing. Therefore, we find that information identifying family members of the deceased may not be withheld pursuant to section 552.101 in conjunction with common law privacy. As you raise no other exceptions for this information, the department must release the victim impact statement, which we have marked, to the requestor. The department must withhold all remaining information pursuant to section 552.134.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

- If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

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<sup>1</sup> Because our conclusion under section 552.134 is dispositive, we need not address your remaining arguments against the disclosure of this information.


at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblat  
Assistant Attorney General  
Open Records Division

MAB/jh

- Ref: ID# 214351

Enc. Submitted documents

c: Ms. Lori Redmond  
Suite 161  
7100 Regency Square  
Houston, Texas 77036  
(w/o enclosures)